

AMENDED IN SENATE MAY 31, 2007

AMENDED IN SENATE MAY 29, 2007

AMENDED IN SENATE MAY 14, 2007

AMENDED IN SENATE APRIL 18, 2007

SENATE BILL

No. 410

Introduced by Senators Simitian and Perata

February 21, 2007

An act to amend Sections 25741, 25742, and 25743 of, and to amend and repeal Section 25740.5 of, the Public Resources Code, and to amend Sections 387 and 399.12 of the Public Utilities Code, relating to renewable energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 410, as amended, Simitian. Energy: renewable energy resources.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. Existing law requires the PUC to require the state's three largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing PUC resolutions refer to the nonbypassable rate component as a "public goods charge." The public goods charge moneys are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources. Existing law requires the State Energy Resources

Conservation and Development Commission (Energy Commission) to transfer funds collected from the renewable energy public goods charge into the Renewable Resource Trust Fund and establishes certain accounts in the fund to carry out specified renewable energy purposes. Existing law requires that the Energy Commission, in carrying out the renewable energy resources program, to optimize public investment and ensure that the most cost-effective and efficient investments in renewable energy resources are vigorously pursued with a long-term goal of achieving a fully competitive and self-sustaining supply of electricity generated from renewable sources. Existing law makes legislative recommendations for allocations among specified in-state renewable electricity generation facilities, including that allocations not be made for electricity that is generated by an in-state renewable electricity generation facility that remains under an electricity purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

This bill would instead recommend that allocations not be made for electricity that is generated by an in-state renewable electricity generation facility having an electricity purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

(2) Existing law requires that 10% of the funds collected as part of the renewable energy public goods charge be deposited in the Existing Renewable Resource Account to be used for a program designed to improve the competitiveness of existing in-state renewable electricity generation facilities and to secure for the state specified benefits. Existing law prohibits any facility from receiving payments from the account for any electricity that is sold at monthly average rates equal to or greater than a target price determined by the Energy Commission. Existing law provides that an existing facility generating electricity from biomass energy is eligible for funding from the account only if it reports certain information on fuel usage to the Energy Commission and certifies fuel usage to the satisfaction of the Energy Commission. Existing law requires the Energy Commission to evaluate existing facilities seeking awards from the Existing Renewable Resource Account and to determine certain matter.

This bill would require the Energy Commission, in making awards from the Existing Renewable Resource Account, to establish a production incentive representing the difference between target prices and the price paid for electricity, and to make payments depending upon

the availability of funding. The bill would authorize the Energy Commission, in expending funds, to establish a time-differentiated incentive structure and to consider inflation and production costs. The bill would delete the prohibition upon any facility receiving payments from the account for electricity that is sold at monthly average rates equal to or greater than a target price determined by the Energy Commission, delete the requirement that an existing facility generating electricity from biomass is eligible for funding only if it reports certain information on fuel usage to the Energy Commission and certifies fuel usage to the satisfaction of the Energy Commission, and delete the requirement that the Energy Commission evaluate facilities seeking awards from the account. The bill would require the Energy Commission to award funding based on a facility's individual need, considering certain matters, and to use its assessment of the facility's individual need to determine the value of an award to the public relative to other renewable energy investment alternatives.

(3) The existing renewables portfolio standard program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). Under existing law, the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement. Existing law requires the governing board of a local publicly owned electric utility to report certain information relative to renewable energy resources to the Energy Commission and its customers.

This bill would state the intent of the Legislature to preserve the eligibility of electricity generated by a small hydroelectric generation facility that is sold to a retail seller within California, including electricity sold to a local publicly owned electric utility, to meet the renewables portfolio standard, and would amend 2 definitions to include small hydroelectric generation facilities supplying electricity to a local publicly owned electric utility as eligible renewable energy resources.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25740.5 of the Public Resources Code,
2 as added by Section 4 of Chapter 464 of the Statutes of 2006, is
3 amended to read:

4 25740.5. (a) The commission shall optimize public investment
5 and ensure that the most cost-effective and efficient investments
6 in renewable energy resources are vigorously pursued.

7 (b) The commission’s long-term goal shall be a fully competitive
8 and self-sustaining supply of electricity generated from renewable
9 sources.

10 (c) The program objective shall be to increase, in the near term,
11 the quantity of California’s electricity generated by in-state
12 renewable electricity generation facilities, while protecting system
13 reliability, fostering resource diversity, and obtaining the greatest
14 environmental benefits for California residents.

15 (d) An additional objective of the program shall be to identify
16 and support emerging renewable technologies in distributed
17 generation applications that have the greatest near-term commercial
18 promise and that merit targeted assistance.

19 (e) The Legislature recommends allocations among all of the
20 following:

21 (1) (A) Except as provided in subparagraph (B), production
22 incentives for new in-state renewable electricity generation
23 facilities, including repowered or refurbished facilities.

24 (B) Allocations shall not be made for electricity that is generated
25 by an in-state renewable electricity generation facility having an
26 electricity purchase contract with an electrical corporation
27 originally entered into prior to September 24, 1996, whether
28 amended or restated thereafter.

29 (C) Notwithstanding subparagraph (B), production incentives
30 may be allowed in any month for incremental new electricity
31 generated by an in-state renewable electricity generation facility
32 that is repowered or refurbished, where the electricity is delivered
33 under an electricity purchase contract with an electrical corporation
34 originally entered into prior to September 24, 1996, whether
35 amended or restated thereafter, if all of the following occur:

- 1 (i) The facility's electricity purchase contract provides that all
2 electricity delivered and sold under the contract is paid at a price
3 that does not exceed the Public Utilities Commission approved
4 short-run avoided cost of energy.
- 5 (ii) Either of the following is true:
- 6 (I) The electricity purchase contract is amended to provide that
7 the kilowatthours used to determine the capacity payment in any
8 time-of-delivery period in any month under the contract shall be
9 equal to the actual kilowatthour production, but no greater than
10 the five-year average of the kilowatthours delivered for the
11 corresponding time-of-delivery period and month, in the years
12 1994 to 1998, inclusive.
- 13 (II) The facility's installed capacity as of December 31, 1998,
14 is less than 75 percent of the nameplate capacity as stated in the
15 electricity purchase contract, the electricity purchase contract is
16 amended to provide that the kilowatthours used to determine the
17 capacity payment in any time-of-delivery period in any month
18 under the contract shall be equal to the actual kilowatthour
19 production, but no greater than the product of the five-year average
20 of the kilowatthours delivered for the corresponding
21 time-of-delivery period and month, in the years 1994 to 1998,
22 inclusive, and the ratio of installed capacity as of December 31 of
23 the previous year, but not to exceed contract nameplate capacity,
24 to the installed capacity as of December 31, 1998.
- 25 (iii) The production incentive is payable only with respect to
26 the kilowatthours delivered in a particular month that exceeds the
27 corresponding five-year average calculated pursuant to clause (ii).
- 28 (2) Rebates, buydowns, or equivalent incentives for emerging
29 renewable technologies.
- 30 (3) Customer education.
- 31 (4) Incentives for reducing fuel costs, that are confirmed to the
32 satisfaction of the commission, at solid fuel biomass energy
33 facilities in order to provide demonstrable environmental and
34 public benefits, including improved air quality.
- 35 (5) Solar thermal generating resources that enhance the
36 environmental value or reliability of the electrical system and that
37 require financial assistance to remain economically viable, as
38 determined by the commission. The commission may require
39 financial disclosure from applicants for purposes of this paragraph.

1 (6) Specified fuel cell technologies, if the commission makes
2 all of the following findings:

3 (A) The specified technologies have similar or better air
4 pollutant characteristics than renewable technologies in the report
5 made pursuant to Section 25748.

6 (B) The specified technologies require financial assistance to
7 become commercially viable by reference to wholesale generation
8 prices.

9 (C) The specified technologies could contribute significantly
10 to the infrastructure development or other innovation required to
11 meet the long-term objective of a self-sustaining, competitive
12 supply of electricity generated from renewable sources.

13 (7) Existing wind-generating resources, if the commission finds
14 that the existing wind-generating resources are a cost-effective
15 source of reliable energy and environmental benefits compared
16 with other in-state renewable electricity generation facilities, and
17 that the existing wind-generating resources require financial
18 assistance to remain economically viable. The commission may
19 require financial disclosure from applicants for the purposes of
20 this paragraph.

21 (f) Notwithstanding any other provision of law, moneys
22 collected for renewable energy pursuant to Article 15 (commencing
23 with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the
24 Public Utilities Code shall be transferred to the Renewable
25 Resource Trust Fund. Moneys collected between January 1, 2007,
26 and January 1, 2012, shall be used for the purposes specified in
27 this chapter.

28 SEC. 2. Section 25740.5 of the Public Resources Code, as
29 added by Section 9 of Chapter 512 of the Statutes of 2006, is
30 repealed.

31 SEC. 3. Section 25741 of the Public Resources Code is
32 amended to read:

33 25741. As used in this chapter, the following terms have the
34 following meaning:

35 (a) "Delivered" and "delivery" mean the electricity output of
36 an in-state renewable electricity generation facility that is used to
37 serve end-use retail customers located within the state. Subject to
38 verification by the accounting system established by the
39 commission pursuant to subdivision (b) of Section 399.13 of the
40 Public Utilities Code, electricity shall be deemed delivered if it is

1 either generated at a location within the state, or is scheduled for
2 consumption by California end-use retail customers. Subject to
3 criteria adopted by the commission, electricity generated by an
4 eligible renewable energy resource may be considered “delivered”
5 regardless of whether the electricity is generated at a different time
6 from consumption by a California end-use customer.

7 (b) “Existing” in reference to an in-state renewable electricity
8 generation facility means a facility that had obtained any necessary
9 permits to operate and was able to generate electricity prior to
10 January 1, 2005.

11 (c) “In-state renewable electricity generation facility” means a
12 facility that meets all of the following criteria:

13 (1) The facility uses biomass, solar thermal, photovoltaic, wind,
14 geothermal, fuel cells using renewable fuels, small hydroelectric
15 generation of 30 megawatts or less, digester gas, municipal solid
16 waste conversion, landfill gas, ocean wave, ocean thermal, or tidal
17 current, and any additions or enhancements to the facility using
18 that technology.

19 (2) The facility satisfies one of the following requirements:

20 (A) The facility is located in the state or near the border of the
21 state with the first point of connection to the transmission network
22 within this state and electricity produced by the facility is delivered
23 to an in-state location.

24 (B) The facility has its first point of interconnection to the
25 transmission network outside the state and satisfies all of the
26 following requirements:

27 (i) It is connected to the transmission network within the
28 Western Electricity Coordinating Council (WECC) service
29 territory.

30 (ii) It commences initial commercial operation after January 1,
31 2005.

32 (iii) Electricity produced by the facility is delivered to an in-state
33 location.

34 (iv) It will not cause or contribute to any violation of a California
35 environmental quality standard or requirement.

36 (v) If the facility is outside of the United States, it is developed
37 and operated in a manner that is as protective of the environment
38 as a similar facility located in the state.

39 (vi) It participates in the accounting system to verify compliance
40 with the renewables portfolio standard by retail sellers, once

1 established by the Energy Commission pursuant to subdivision
2 (b) of Section 399.13 of the Public Utilities Code.

3 (C) The facility meets the requirements of clauses (i), (iii), (iv),
4 (v), and (vi) in subparagraph (B), but does not meet the
5 requirements of clause (ii) because it commences initial operation
6 prior to January 1, 2005, if the facility satisfies either of the
7 following requirements:

8 (i) The electricity is from incremental generation resulting from
9 expansion or repowering of the facility.

10 (ii) The facility has been part of the existing baseline of eligible
11 renewable energy resources of a retail seller established pursuant
12 to paragraph (2) of subdivision (b) of Section 399.15 of the Public
13 Utilities Code or has been part of the existing baseline of eligible
14 renewable energy resources of a local publicly owned electric
15 utility established pursuant to Section 387.

16 (3) For the purposes of this subdivision, “solid waste
17 conversion” means a technology that uses a noncombustion thermal
18 process to convert solid waste to a clean-burning fuel for the
19 purpose of generating electricity, and that meets all of the following
20 criteria:

21 (A) The technology does not use air or oxygen in the conversion
22 process, except ambient air to maintain temperature control.

23 (B) The technology produces no discharges of air contaminants
24 or emissions, including greenhouse gases as defined in Section
25 42801.1 of the Health and Safety Code.

26 (C) The technology produces no discharges to surface or
27 groundwaters of the state.

28 (D) The technology produces no hazardous wastes.

29 (E) To the maximum extent feasible, the technology removes
30 all recyclable materials and marketable green waste compostable
31 materials from the solid waste stream prior to the conversion
32 process and the owner or operator of the facility certifies that those
33 materials will be recycled or composted.

34 (F) The facility at which the technology is used is in compliance
35 with all applicable laws, regulations, and ordinances.

36 (G) The technology meets any other conditions established by
37 the commission.

38 (H) The facility certifies that any local agency sending solid
39 waste to the facility diverted at least 30 percent of all solid waste
40 it collects through solid waste reduction, recycling, and

1 composting. For purposes of this paragraph, “local agency” means
2 any city, county, or special district, or subdivision thereof, which
3 is authorized to provide solid waste handling services.

4 (d) “New” in reference to an in-state renewable electricity
5 generation facility means a facility that either had not obtained all
6 of the necessary permits to operate or was not able to generate
7 electricity prior to January 1, 2005.

8 (e) “Procurement entity” means any person or corporation that
9 enters into an agreement with a retail seller to procure eligible
10 renewable energy resources pursuant to subdivision (f) of Section
11 399.14 of the Public Utilities Code.

12 (f) “Renewable energy public goods charge” means that portion
13 of the nonbypassable system benefits charge authorized to be
14 collected and to be transferred to the Renewable Resource Trust
15 Fund pursuant to the Reliable Electric Service Investments Act
16 (Article 15 (commencing with Section 399) of Chapter 2.3 of Part
17 1 of Division 1 of the Public Utilities Code).

18 (g) “Report” means the report entitled “Investing in Renewable
19 Electricity Generation in California” (June 2001, Publication
20 Number P500-00-022) submitted to the Governor and the
21 Legislature by the commission.

22 (h) “Retail seller” means a “retail seller” as defined in Section
23 399.12 of the Public Utilities Code.

24 SEC. 4. Section 25742 of the Public Resources Code is
25 amended to read:

26 25742. (a) Ten percent of the funds collected pursuant to the
27 renewable energy public goods charge shall be used for programs
28 that are designed to achieve fully competitive and self-sustaining
29 existing in-state renewable electricity generation facilities, and to
30 secure for the state the environmental, economic, and reliability
31 benefits that continued operation of those facilities will provide
32 during the 2007–2011 investment cycle. Eligibility for incentives
33 under this section shall be limited to those technologies found
34 eligible for funds by the commission pursuant to paragraphs (4),
35 (5), and (7) of subdivision (e) of Section 25740.5.

36 (b) Any funds used to support in-state renewable electricity
37 generation facilities pursuant to this section shall be expended in
38 accordance with the provisions of this chapter, including the
39 following:

1 (1) The commission shall establish a production incentive, which
2 shall not exceed payment caps established by the commission,
3 representing the difference between target prices and the price paid
4 for electricity, if sufficient funds are available. If there are
5 insufficient funds in any payment period to pay either the difference
6 between the target and price paid for electricity or the payment
7 caps, production incentives shall be based on the amount
8 determined by dividing available funds by eligible generation.

9 (2) The commission may establish a time-differentiated incentive
10 structure that encourages plants to run the maximum feasible
11 amount of time and that provides a higher incentive when the plants
12 are receiving the lowest price.

13 (3) The commission may consider inflation and production
14 costs.

15 (c) Facilities that are eligible to receive funding pursuant to this
16 section shall be registered in accordance with criteria developed
17 by the commission and those facilities shall not receive payments
18 for any electricity produced that is used onsite.

19 (d) (1) The commission shall award funding to eligible facilities
20 based on a facility's individual need. In assessing a facility's
21 individual need, the commission shall, to the extent feasible,
22 consider all of the following:

23 (A) The amount of the funds being considered for an award to
24 the facility.

25 (B) The cumulative amount of funds the facility has received
26 previously from the commission and other state sources.

27 (C) The value of any current federal or state tax credits.

28 (D) The facility's contract price for energy and capacity.

29 (E) The likelihood that the award will make the facility
30 competitive and self-sustaining within the 2007–2011 investment
31 cycle.

32 (F) Any other criteria as determined by the commission.

33 (2) The assessment shall also consider the public benefits
34 provided by the operation of the facility.

35 (3) The commission shall use its assessment of the facility's
36 individual need to determine the value of an award to the public
37 relative to other renewable energy investment alternatives.

38 (4) The commission shall compile its findings and report them
39 to the Legislature in the reports prepared pursuant to Section 25748.

1 SEC. 5. Section 25743 of the Public Resources Code is
2 amended to read:

3 25743. (a) Fifty-one and one-half percent of the money
4 collected pursuant to the renewable energy public goods charge
5 shall be used for programs designed to foster the development of
6 new in-state renewable electricity generation facilities, and to
7 secure for the state the environmental, economic, and reliability
8 benefits that operation of those facilities will provide.

9 (b) Any funds used for new in-state renewable electricity
10 generation facilities pursuant to this section shall be expended in
11 accordance with the report, subject to all of the following
12 requirements:

13 (1) In order to cover the above market costs of eligible
14 renewable energy resources as approved by the Public Utilities
15 Commission and selected by retail sellers to fulfill their obligations
16 under Article 16 (commencing with Section 399.11) of Chapter
17 2.3 of Part 1 of Division 1 of the Public Utilities Code, the
18 commission shall award funds in the form of supplemental energy
19 payments, subject to the following criteria:

20 (A) The commission may establish caps on supplemental energy
21 payments. The caps shall be designed to provide for a viable energy
22 market capable of achieving the goals of Article 16 (commencing
23 with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the
24 Public Utilities Code. The commission may waive application of
25 the caps to accommodate a facility if it is demonstrated to the
26 satisfaction of the commission that operation of the facility would
27 provide substantial economic and environmental benefits to end-use
28 customers subject to the renewable energy public goods charge.

29 (B) Supplemental energy payments shall be awarded only to
30 facilities that are eligible for funding under this section.

31 (C) Supplemental energy payments awarded to facilities selected
32 by a retail seller or procurement entity pursuant to Article 16
33 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of
34 Division 1 of the Public Utilities Code shall be paid for no longer
35 than 10 years, but shall, subject to the payment caps in
36 subparagraph (A), be equal to the cumulative above-market costs
37 relative to the applicable market price referent at the time of initial
38 contracting, over the duration of the contract with the retail seller
39 or procurement entity.

1 (D) The commission shall reduce or terminate supplemental
2 energy payments for projects that fail either to commence and
3 maintain operations consistent with the contractual obligations to
4 an electrical corporation, or that fail to meet eligibility
5 requirements.

6 (E) Funds shall be managed in an equitable manner in order for
7 retail sellers to meet their obligation under Article 16 (commencing
8 with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the
9 Public Utilities Code.

10 (F) A project selected by an electrical corporation may receive
11 supplemental energy payments only if it results from a competitive
12 solicitation that is found by the Public Utilities Commission to
13 comply with the California Renewables Portfolio Standard Program
14 under Article 16 (commencing with Section 399.11) of Chapter
15 2.3 of Part 1 of Division 1 of the Public Utilities Code, and the
16 project has entered into an electricity purchase agreement resulting
17 from that solicitation, that is approved by the Public Utilities
18 Commission. A project selected for an electricity purchase
19 agreement by another retail seller or procurement entity may
20 receive supplemental energy payments only if the Public Utilities
21 Commission determines that the selection of the project is
22 consistent with the results of a least-cost and best-fit process, and
23 the supplemental energy payments are reasonable in comparison
24 to those paid under similar contracts with other retail sellers. The
25 commission may not award supplemental energy payments to
26 service load that is not subject to the renewable energy public
27 goods charge.

28 (G) (i) Supplemental energy payments shall not be awarded
29 for any purchases of renewable energy credits.

30 (ii) Supplemental energy payments shall not be awarded for
31 electricity purchase agreements that have a duration of less than
32 10 years. The ineligibility of agreements of less than 10 years
33 duration for supplemental energy payments does not constitute an
34 insufficiency in supplemental energy payments pursuant to
35 paragraph (4) or (5) of subdivision (b) of Section 399.15.

36 (2) (A) A facility that is located outside of California shall not
37 be eligible for funding under this section unless it satisfies the
38 requirements of this subdivision and the criteria of subparagraph
39 (B) of paragraph (2) of subdivision (c) of Section 25741.

1 (B) No more than 10 percent of the funds available under this
2 section shall be awarded to facilities located outside of California.

3 (3) Facilities that are eligible to receive funding pursuant to this
4 section shall be registered in accordance with criteria developed
5 by the commission and those facilities may not receive payments
6 for any electricity produced that has any of the following
7 characteristics:

8 (A) Is sold under an existing long-term contract with an existing
9 in-state electrical corporation if the contract includes fixed energy
10 or capacity payments, except for that electricity that satisfies
11 subparagraph (C) of paragraph (1) of subdivision (c) of Section
12 399.6 of the Public Utilities Code.

13 (B) Is used onsite or is sold to customers in a manner that
14 excludes competition transition charge payments, or is otherwise
15 excluded from competition transition charge payments.

16 (C) Is a hydroelectric generation project that will require a new
17 or increased appropriation of water under Part 2 (commencing
18 with Section 1200) of Division 2 of the Water Code, or any other
19 provision authorizing an appropriation of water.

20 (D) Is a solid waste conversion facility, unless the facility meets
21 the criteria established in paragraph (3) of subdivision (b) of
22 Section 25741 and the facility certifies that any local agency
23 sending solid waste to the facility is in compliance with Division
24 30 (commencing with Section 40000), has reduced, recycled, or
25 composted solid waste to the maximum extent feasible, and shall
26 have been found by the California Integrated Waste Management
27 Board to have diverted at least 30 percent of all solid waste through
28 source reduction, recycling, and composting.

29 (4) Eligibility to compete for funds or to receive funds shall be
30 contingent upon having to sell the electricity generated by the
31 renewable electricity generation facility to customers subject to
32 the renewable energy public goods charge.

33 (5) The commission may require applicants competing for
34 funding to post a forfeitable bid bond or other financial guaranty
35 as an assurance of the applicant's intent to move forward
36 expeditiously with the project proposed. The amount of any bid
37 bond or financial guaranty may not exceed 10 percent of the total
38 amount of the funding requested by the applicant.

39 (6) In awarding funding, the commission may provide preference
40 to projects that provide tangible demonstrable benefits to

1 communities with a plurality of minority or low-income
2 populations.

3 (c) Repowered existing facilities shall be eligible for funding
4 under this subdivision if the capital investment to repower the
5 existing facility equals at least 80 percent of the value of the
6 repowered facility.

7 (d) Facilities engaging in the direct combustion of municipal
8 solid waste or tires are not eligible for funding under this
9 subdivision.

10 (e) Production incentives awarded under this subdivision prior
11 to January 1, 2002, shall commence on the date that a project
12 begins electricity production, provided that the project was
13 operational prior to January 1, 2002, unless the commission finds
14 that the project will not be operational prior to January 1, 2002,
15 due to circumstances beyond the control of the developer. Upon
16 making a finding that the project will not be operational due to
17 circumstances beyond the control of the developer, the commission
18 shall pay production incentives over a five-year period,
19 commencing on the date of operation, provided that the date that
20 a project begins electricity production may not extend beyond
21 January 1, 2007.

22 (f) Facilities generating electricity from biomass energy shall
23 be considered an in-state renewable electricity generation facility
24 to the extent that they report to the commission the types and
25 quantities of biomass fuels used and certify to the satisfaction of
26 the commission that fuel utilization is limited to the following:

27 (1) Agricultural crops and agricultural wastes and residues.

28 (2) Solid waste materials such as waste pallets, crates, dunnage,
29 manufacturing, and construction wood wastes, landscape or
30 right-of-way tree trimmings, mill residues that are directly the
31 result of the milling of lumber, and rangeland maintenance
32 residues.

33 (3) Wood and wood wastes that meet all of the following
34 requirements:

35 (A) Have been harvested pursuant to an approved timber harvest
36 plan prepared in accordance with the Z'berg-Nejedly Forest
37 Practice Act of 1973 (Chapter 8 (commencing with Section 4511)
38 of Part 2 of Division 4).

39 (B) Have been harvested for the purpose of forest fire fuel
40 reduction or forest stand improvement.

1 (C) Do not transport or cause the transportation of species known
2 to harbor insect or disease nests outside zones of infestation or
3 current quarantine zones, as identified by the Department of Food
4 and Agriculture or the Department of Forestry and Fire Protection,
5 unless approved by the Department of Food and Agriculture and
6 the Department of Forestry and Fire Protection.

7 SEC. 6. Section 387 of the Public Utilities Code is amended
8 to read:

9 387. (a) Each governing body of a local publicly owned electric
10 utility, as defined in Section 9604, shall be responsible for
11 implementing and enforcing a renewables portfolio standard that
12 recognizes the intent of the Legislature to encourage renewable
13 resources, while taking into consideration the effect of the standard
14 on rates, reliability, and financial resources and the goal of
15 environmental improvement.

16 (b) Each local publicly owned electric utility shall report, on an
17 annual basis, to its customers and to the State Energy Resources
18 Conservation and Development Commission, the following:

19 (1) Expenditures of public goods funds collected pursuant to
20 Section 385 for eligible renewable energy resource development.
21 Reports shall contain a description of programs, expenditures, and
22 expected or actual results.

23 (2) (A) The resource mix used to serve its customers by fuel
24 type. Reports shall contain the contribution of each type of
25 renewable energy resource with separate categories for those fuels
26 that are eligible renewable energy resources as defined in Section
27 399.12, except that the electricity is delivered to the local publicly
28 owned electric utility and not a retail seller.

29 (B) Electricity shall be reported as having been delivered to the
30 local publicly owned electric utility from an eligible renewable
31 energy resource when the electricity would qualify for compliance
32 with the renewables portfolio standard if it were delivered to a
33 retail seller. It is the intent of the Legislature in enacting this
34 subparagraph to preserve the eligibility of electricity generated by
35 a small hydroelectric generation facility that is sold to a retail seller
36 within California, including electricity sold to a local publicly
37 owned electric utility, to meet the renewables portfolio standard,
38 when that generation meets the criteria set forth in Section 399.12.

1 (3) The utility’s status in implementing a renewables portfolio
2 standard pursuant to subdivision (a) and the utility’s progress
3 toward attaining the standard following implementation.

4 SEC. 7. Section 399.12 of the Public Utilities Code is amended
5 to read:

6 399.12. For purposes of this article, the following terms have
7 the following meanings:

8 (a) “Delivered” and “delivery” have the same meaning as
9 provided in subdivision (a) of Section 25741 of the Public
10 Resources Code.

11 (b) “Eligible renewable energy resource” means an electric
12 generating facility that meets the definition of “in-state renewable
13 electricity generation facility” in Section 25741 of the Public
14 Resources Code, subject to the following limitations:

15 (1) (A) An existing small hydroelectric generation facility of
16 30 megawatts or less shall be eligible only if a retail seller or local
17 publicly owned electric utility owned or procured the electricity
18 from the facility as of December 31, 2005. A new hydroelectric
19 facility is not an eligible renewable energy resource if it will require
20 a new or increased appropriation or diversion of water from a
21 watercourse.

22 (B) Notwithstanding subparagraph (A), an existing conduit
23 hydroelectric facility, as defined by Section 823a of Title 16 of
24 the United States Code, of 30 megawatts or less, shall be an eligible
25 renewable energy resource. A new conduit hydroelectric facility,
26 as defined by Section 823a of Title 16 of the United States Code,
27 of 30 megawatts or less, shall be an eligible renewable energy
28 resource so long as it does not require a new or increased
29 appropriation or diversion of water from a watercourse.

30 ~~(3)~~

31 (2) A facility engaged in the combustion of municipal solid
32 waste shall not be considered an eligible renewable resource unless
33 it is located in Stanislaus County and was operational prior to
34 September 26, 1996.

35 (c) “Energy Commission” means the State Energy Resources
36 Conservation and Development Commission.

37 (d) “Local publicly owned electric utility” has the same meaning
38 as provided in subdivision (d) of Section 9604.

39 (e) “Procure” means that a retail seller or local publicly owned
40 electric utility receives delivered electricity generated by an eligible

1 renewable energy resource that it owns or for which it has entered
2 into an electricity purchase agreement. Nothing in this article is
3 intended to imply that the purchase of electricity from third parties
4 in a wholesale transaction is the preferred method of fulfilling a
5 retail seller's obligation to comply with this article or the obligation
6 of a local publicly owned electric utility to fulfill its renewables
7 portfolio standard adopted pursuant to Section 387.

8 (f) "Renewables portfolio standard" means the specified
9 percentage of electricity generated by eligible renewable energy
10 resources that a retail seller is required to procure pursuant to this
11 article or that a local publicly owned electric utility is required to
12 ~~purchase~~ *procure* under a program adopted pursuant to Section
13 387.

14 (g) (1) "Renewable energy credit" means a certificate of proof,
15 issued through the accounting system established by the Energy
16 Commission pursuant to Section 399.13, that one unit of electricity
17 was generated and delivered by an eligible renewable energy
18 resource.

19 (2) "Renewable energy credit" includes all renewable and
20 environmental attributes associated with the production of
21 electricity from the eligible renewable energy resource, except for
22 an emissions reduction credit issued pursuant to Section 40709 of
23 the Health and Safety Code and any credits or payments associated
24 with the reduction of solid waste and treatment benefits created
25 by the utilization of biomass or biogas fuels.

26 (3) No electricity generated by an eligible renewable energy
27 resource attributable to the use of nonrenewable fuels, beyond a
28 de minimus quantity, as determined by the Energy Commission,
29 shall result in the creation of a renewable energy credit.

30 (h) "Retail seller" means an entity engaged in the retail sale of
31 electricity to end-use customers located within the state, including
32 any of the following:

33 (1) An electrical corporation, as defined in Section 218.

34 (2) A community choice aggregator. The commission shall
35 institute a rulemaking to determine the manner in which a
36 community choice aggregator will participate in the renewables
37 portfolio standard program subject to the same terms and conditions
38 applicable to an electrical corporation.

39 (3) An electric service provider, as defined in Section 218.3,
40 for all sales of electricity to customers beginning January 1, 2006.

1 The commission shall institute a rulemaking to determine the
2 manner in which electric service providers will participate in the
3 renewables portfolio standard program. The electric service
4 provider shall be subject to the same terms and conditions
5 applicable to an electrical corporation pursuant to this article.
6 Nothing in this paragraph shall impair a contract entered into
7 between an electric service provider and a retail customer prior to
8 the suspension of direct access by the commission pursuant to
9 Section 80110 of the Water Code.

10 (4) “Retail seller” does not include any of the following:

11 (A) A corporation or person employing cogeneration technology
12 or producing electricity consistent with subdivision (b) of Section
13 218.

14 (B) The Department of Water Resources acting in its capacity
15 pursuant to Division 27 (commencing with Section 80000) of the
16 Water Code.

17 (C) A local publicly owned electric utility.